IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.852 OF 1996

1. Shri.Shashikant Narhar Abhyankar
2. Shri.Shashikant Dajiba Bhide
3. United India Insurance Co.Ltd. .. Appellants

V/s

1. Smt.Indudevi Vidyasagar Shrivastav
2. Smt.Sushiladevi Vidyasagar Shrivastav
3. Baliram Kumar Vidyasagar Shrivastav (Minor) .. Respondents

Mr.S.R.Singh for the Appellants.
None for the Respondents.

CORAM: DR.S.RADHAKRISHNAN J.
DATE : 15th June, 2006.

ORAL JUDGMENT:-

1. The present Appeal has been filed against the judgment and order of the Court of District and Sessions Judge, Thane dated 9th November, 1995. The said order partly allowed the claimants compensation to the extent of Rs.1,09,108/- and interest at the rate of 12% per annum under the provisions of Motor Vehicles Act, 1988.

2. The Court held that the deceased had not sustained the fatal injury ‘in the course of employment’ and compensation was thus not barred by Section 53 and Section 61 of the Employees State Insurance Act, 1948 (hereinafter referred as ESI Act). The original Claimants (Respondents in the present case) were granted benefits under the Motor Vehicles Act.

3. The facts ascertained by the trial Court are as follows:-

. The deceased Vidyasagar Shrivastav was an employee of Manometer India Ltd situated at Wagale Estate, Thane. On 1st March, 1988 while he was on his bicycle, riding from the left to the right side of the road, his bicycle was dashed by a scooter. Thereafter he sustained injuries and was taken to E.S.I.S. Hospital, Mulund from where he was transferred to J.J.Hospital, Bombay. On 12th June, 1988 he succumbed to his injuries. He was survived by his first wife Indudevi Shrivastav, second wife Sushiladevi Shrivastav and her son begotten by him by name Baliram Shrivastav who was a three-month-old minor when the accident occurred. The present claimants (Respondents herein) are the Sushiladevi Shrivastav and her son Baliram Shrivastav. Several attempts were made since the Appeal was filed nine years ago to serve the first wife (Respondent No.1), all of which failed. Hence, in the light of the given circumstances, the name of Respondent No.1, namely Indudevi Shrivastav has been dropped from the present Appeal.

4. Being aggrieved by the order of the District Court, the Appellants challenged the same on the grounds that in view of Section 75(3), read with Section 53 and Section 61 of the ESI Act, the Tribunal had exceeded its jurisdiction.

They contended that since the dependents of the deceased (Respondent in the present case) had received benefits under the ESI Act, they would be barred from claiming compensation under the Motor Vehicles Act, in view of the statutory bar under Section 53, Section 61 of the ESI Act.

5. It was further contended that the conclusion of the learned District Judge that the deceased could not have been said to have sustained ‘employment injuries’ since the accident occurred when he had come out of the factory was wholly perverse. The learned Counsel for the Appellants agrued that in the absence of evidence to the contrary, presumption as to the accident occurring in the course of employment under the express provision of Section 51A, ESI Act would be attracted.

6. Mr.Singh, the learned Counsel for the Appellants pointed out that it is an undisputed fact that the Respondents were already receiving benefits of accident claims under the ESI Scheme. Hence, Mr.Singh contended that the Respondents are precluded from raising alternate, additional compensatory claims under the Motor Vehicles Act.

7. It would be relevant to quote Section 61 of the Employees State Insurance Act, which reads as under:-

> **Bar of benefits under other enactments;-** "When a person is entitled to any of the benefits provided by

this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment."

8. The **'doctrine of election'** states that if an individual has sought a certain relief under a statute, he waives his right to claim a dual, similar relief under another statute. The doctrine has been cited with approval in a number of judgments, to which Mr.Singh, the learned Counsel for the Appellants has strongly relied upon.

9. The Hon'ble Supreme Court in the case of **National Insurance Company Ltd.V/s Mastan and Anr.- (2006) 2 SCC 641,** has observed in its judgment at paragraph No.23 as follows:-

"The "doctrine of election" is a branch of "rule of estoppel" in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. The doctrine of election postulates that when two remedies are available for the same relief, the aggrieved party has the option to elect either of them but not both. Although there are certain exceptions to the same rule but the same has no application in the instant case."

. Similarly in the above judgment in Paragraph No.21, the Supreme Court has further observed :-

".....A party to a lis, having regard to the different provisions of the two Acts, cannot enforce liabilities of the insurer under both the Acts. He has to elect for one."

10. Even as far back as in 1964, the Supreme Court had upheld this doctrine in the case of C.B**eepathumma V/s. Velasari Shankaranarayana Kadambholithaya - (1964) 5 SCR 836**, wherein, in Paragraph No.25 the Supreme Court has quoted the classic words of Maitland, which read as under:-

".... He who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must confirm to all its provisions and renounce all rights that are inconsistent with it." (See Maitland's Lecture on Equity, Lecture 18)

11. Mr.Singh, the learned Counsel for the Appellant, contended that the bar against double claims envisaged and enacted clearly by the Legislature under Section 53 and Section 61 of the ESI Act has been explained in the case of **A.Trehan V/s. Associated Electrical Agencies - (1996) ACJ 853,** in the following words:-

"..... The bar is absolute as can be seen from the use of the words shall not be entitled to receive or recover, 'whether from the employer of the insured person or from any other person', 'any compensation or damages' and 'under the Workmen's Compensation Act,

1923 (8 of 1923) or any other law for time being in force or otherwise'. The words 'employed by the Legislature' are clear and unequivocal."

12. A Division Bench of this very Court comprising of Justice Pendse and Justice Vyas has held in the case of **Associated Electrical Agencies V/s.Commissioner for Workmen's Compensation & Judge, 3rd Labour Court, Bombay & Another - 1994 ACJ 110,** (in Paragraph No.7), as under:-

"A plain reading of Section 53 makes it clear that the right to seek compensation or damages by an insured person in respect of an employment injury under any law including Workmen's Compensation Act is taken away. The bar created under Section 53 is absolute."

13. In the same judgment it is further observed, "Once insurance cover is available to an employee and when the insurance premium is contributed substantially by the employer and partly by the employee, then the Legislature was justified in creating a bar for employees seeking benefit outside the benefits available under the Employees State Insurance Corporation Act."

14. Mr.Singh thereafter referred to the judgment in the case of **Ganpat Pratap Bhogle V/s.H.I.Roche - 1994 ACJ 1101,** wherein it is observed, "Any claim for compensation or damages in respect of employment injury is not permissible

when the benefit is available under the provisions of the Employees State Insurance Act."

15. Mr.Singh has submitted that in the light of the authorities cited, it is abundantly clear that the statutory bar precludes the Respondents from staking any claim under the Motor Vehicles Act.

16. In the above, there is no dispute that the Respondents were receiving the benefits under the Employees State Insurance Scheme, when the above application for compensation was made under the provisions of the Motor Vehicles Act.

17. Therefore, the main issue in the above Appeal is whether the Respondents can claim compensation under the Motor Vehicles Act when the Respondents are already receiving benefits under ESI Act.

18. Under the aforesaid facts and circumstances, especially in the light of the above judgments, the Respondents once receiving benefits under the ESI Act, cannot again seek compensation under the Motor Vehicles Act. Accordingly the Appeal is allowed, the impugned judgment and decree dated 9th November, 1995 stands set aside and the Motor Accident Claim No.395 of 1995 filed before the District Judge, Thane, stands dismissed, however with no order as to costs.

19. The quote from Shakespeare's **The Merchant of Venice,** the quality of mercy is not strained. It droppeth as the gentle rain from heaven upon the place beneath. It is twice blest: It blesseth him that gives and him that takes. 'Tis mightiest in the mightiest; It becomes the throned monarch better than his crown; His sceptre shows the force of temporal power, The attribute to awe and majesty, Wherein doth sit the dread and fear of kings; But mecry is above this sceptred sway, It is enthroned in the hearts of kings, It is an attribute to God himself; And earthly power doth then show likest God's When mercy seasons justice..."

20. It has come to notice of this Court that in a large number of accident claims, the claimants are impoverished and illiterate litigants. After the death of the employee, the nominee(s) or the dependent(s) immediately seek shelter of the benefits guaranteed by the ESI Sehcme, thus inadvertently abandoning their right to subsequent claims (lump sum, greater or otherwise) under the Workmen's Compensation Act, 1923 or the Motor Vehicles Act, 1988. Hence at the time of granting such benefits, the dependants of the deceased or the disabled must be informed thoroughly of the consequences. This may be compared to the doctrine of 'informed consent', which is taken recourse of in medical negligence cases. Only when the claimants are aware of the choices they are eligible to make with respect to compensation, would they be able to exercise the doctrine of 'election' in the real sense of the term.

(DR.S.RADHAKRISHNAN, J.)